

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 735/December 11, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14351

In the Matter of

ROBERT DAVID BEAUCHENE

:
:

ORDER

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP), pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act), Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act), and Section 9(b) of the Investment Company Act of 1940 (Investment Company Act), on April 22, 2011. The OIP alleges that Robert David Beauchene (Beauchene) violated the antifraud provisions of the Securities Act of 1933 and the Exchange and Advisers Acts. On September 27, 2011, the proceeding was stayed, pursuant to 17 C.F.R. § 201.210(c)(3), during the pendency of United States v. Beauchene, 11-cr-1016 (S.D.N.Y.).

The parallel criminal proceeding has now been completed, and Beauchene convicted of securities fraud and wire fraud. United States v. Beauchene, 11-cr-1016 (S.D.N.Y. Oct. 9, 2012).¹ In view thereof, the Division of Enforcement (Division) requests that the stay be lifted and states that the United States Attorney for the Southern District of New York, at whose request the stay was imposed, does not oppose this. Accordingly, the stay will be lifted.

Beauchene's pending Motion, filed September 19, 2011, will now be denied. The Motion argues that the proceeding should be dismissed as unauthorized because, at the time of the events at issue, Beauchene was not registered or associated with a registrant, nor was his investment vehicle registered. This argument is unavailing. Beauchene can be subject to sanctions under the Exchange, Advisers, and Investment Company Acts even if he were not associated with a registered broker-dealer or investment adviser and his investment vehicle were not a registered investment company. See Teicher v. SEC, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999) (holding that Commission has authority to bar unregistered persons from association with registered or unregistered investment

¹ The Division of Enforcement may wish to request the Commission to amend the OIP to add or substitute the conviction as the basis for the proceeding.

advisers or otherwise sanction them under Section 203 of the Advisers Act); Vladislav Steven Zubkis, Exchange Act Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627, recon. denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584 (unregistered associated person of an unregistered broker-dealer barred from association with a broker or dealer); Zion Capital Mgmt. LLC, Securities Act Release No. 8345 (Dec. 11, 2003), 57 S.E.C. 99, 110 n.27 (holding the fact that a hedge fund was not a registered investment company not to be a barrier to imposing an investment company bar).

The Division also requests leave to file a motion for summary disposition pursuant to 17 C.F.R. § 201.250. Leave will be granted and the briefing schedule requested by the Division will be ordered: the Division's motion for summary disposition to be filed by January 28, 2013; Beauchene's opposition, if any, to be filed by February 11, 2013; and the Division's reply, if any, to be filed by February 18, 2013.

In light of the above, and consistent with 17 C.F.R. § 201.161, the prehearing conference scheduled for January 11, 2013, will be postponed to April 12, 2013, if the proceeding has not been resolved by then.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge